IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Writ petition No. 90 of 2003 (S/B)

Date of decision: 7th March, 2005

For the approval of:

Hon'ble Chief Justice V.S. Sirpurkar.

Hon'ble Mr. Justice P.C. Pant.

- Whether the order/judgment should be sent to the reporters for reporting? (Yes)

- Whether the reporter be allowed to see the judgment? (Yes)

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IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 90 of 2003 (S/B)

Hanuman Singh Nabiyal,
S/o Late Sri Man Singh,
Presently R/o Rudrapur,
District Udham Singh Nagar. .....Petitioner

Versus

1. State of Uttaranchal
through Secretary, Department of Finance,
Uttaranchal Shasan, Dehradun.
2. Ayukta Kar, Uttaranchal,
Dehradun.
3. State of U.P.,
through Principal Secretary,
Department of Institutional Finance,
U.P. Shasan, Lucknow.
4. Union of India. .....Respondents

Mr. Gopal Narain, Advocate for the petitioner.
Mr. K.P. Upadhyaya, Standing Counsel for the State of Uttaranchal.
Mr. S.P.S. Panwar, Addl. Chief Standing Counsel for the State of U.P.

Coram: Hon. V.S. Sirpurkar, C.J.
Hon. Parafulla C. Pant, J.

ORAL JUDGMENT: (Per Hon'ble the Chief Justice)

1. Heard Mr. Gopal Narain, Advocate appearing for the petitioner and Mr. K.P. Upadhyaya, Standing Counsel appearing on behalf of the State of Uttaranchal.

2. This writ petition has a peculiar fact. The petitioner was working with the erstwhile State of Uttar Pradesh in his capacity as an Assistant Commissioner, Sales Tax. AT the time, when the State of Uttar Pradesh was divided, his choice was asked and admittedly, he gave the choice for the State of Uttaranchal. At the relevant time, he was working as Assistant Commissioner, Sales Tax at Radrapur, which area, ultimately, fell to Uttaranchal.

3. The petitioner says that before the State of Uttaranchal came into existence, a Departmental Promotion Committee was constituted by the State Government i.e. the State of Uttar Pradesh against the

then available vacancies in Uttar Pradesh for the posts of Deputy Commissioner, Trade Tax. The petitioner belongs to Scheduled Tribe. He claimed that he stood at serial No. 2 in the seniority list of the Scheduled Tribe candidates. His case is that he was considered for his promotion by the said Departmental Promotion Committee and he was recommended to be promoted to the post of Deputy Commissioner, Trade Tax by the Departmental Promotion Committee. On his promotion, the petitioner offered his joining report under his own signature on 05.05.2001, in which he claimed that since, he was promoted by the Uttar Pradesh Government to the post of Deputy Commissioner, Trade Tax by order dated 01.05.2001 bearing No. क0नि0–1–1857/11–2001–173/2000, he was joining at Rudrapur, itself, where he was serving as Assistant Commissioner; in the post of Deputy Commissioner, Trade Tax, Dehradun and it seems that the Commissioner refused to countersigned in & sought for the guidance from the State government by his communication dated 04.05.2001 bearing No. 252/आयु0–कर /उत्तरांचल देहरादून–2001–2002–स्था0.

4. The petitioner had also filed a representation dated 31.07.2001 to the State, which was received by the State Government on 06.08.2001, which was under consideration of the Government. However, the petitioner filed a writ petition No. 828 of 2001 (S/B), which was disposed of by the Court as the petitioner was allowed to withdraw the said writ petition, perhaps, as his representation was pending for consideration with the Government. Four Weeks' time was given to the State Government to decide the said representation. The petitioner, along with this order passed by the High Court, made a fresh representation dated 05.10.2001, which was received by the Government on 12.10.2001. This representation was considered as per the orders of the Court and ultimately, the Government rejected the claim of the petitioner, vide its order dated 12.11.2001.

5. The petitioner, therefore, filed the present writ petition registered as writ petition No. 90 of 2003 (S/B) seeking the relief of quashing the order dated 12.22.2001. It was his case that since he was already promoted by the State of Uttar Pradesh by order dated 01.05.2001 and since he had already joined on the post of Deputy Commissioner, Trade Tax at Rudrapur on 05.05.2001, the joining report should be accepted. On this writ petition, initially, an order came to be passed on 22.07.2003, wherein the Court made some observations regarding the interpretation of Section 73 of the U.P. Reorganisation Act and observed that the case of the petitioner was liable to be reconsidered by the State Government. Following direction was given by the Division Bench of this Court:

> "Therefore, we wash the impugned order by which the representation of the petitioner has been rejected and direct the State government to reconsider the matter within 10 days in the light of the observations made above in the order. The decision so taken shall be filed by the State Government along with supplementary affidavit immediately after ten days.
>
> List this petition on 2.8.2003
>
> Sd/- Sd/-
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> (Irshad Hussain, J.) (P.C. Verma, A.C.J.)"

6. The writ petition was directed to be posted on 02.08.2003. Eventually, the representation came to be rejected, again, by order dated 08.08.2003. There appeasers to be an order on record dated 06.12.2003, in which a reference is made that the counsel for the petitioner had stated at the bar that the juniors of the petitioner had been promoted in the State of Uttar Pradesh and the petitioner was not being promoted pursuant to the result of the Departmental Promotion Committee held at Uttar Pradesh and therefore, the petitioner is suffering a civil injury. The Court also referred to the request of the petitioner for being relieved forthwith for the State of Uttar Pradesh from the State of Uttaranchal. The Court passed the following order:

> "Upon considering the rival submissions of the learned counsel for the petitioner and learned State counsel, in the interest of justice, we provide that since the State of Uttaranchal has not given promotion to the petitioner in view of the result of

the DPC held in the Sate of U.P. prior to the appointed day, the petitioner shall be relieved for the State of U.P., so that the petitioner may avail the result of DPC held in the State of U.P.

With the aforesaid observations, the petition is disposed of finally.

Sd/- Sd/-
(Irshad Hussain, J.) (P.C. Verma, A.C.J.)"

7. This should have been the end of the writ petition. However later on, a review application was filed by the petitioner and that review application was allowed by the Court on 25.09.2004. The order dated 25.09.2004 reads as under:

"Heard Sri Gopal Narain, learned counsel for the review petitioner.

The review application has been filed to review the order dated 6.12.2003 passed by this Court in W.P. No. 90 (S/B) of 2003. Full facts were not placed before the Court in the counter affidavit at the time of hearing of the writ petition. The review petition is therefore allowed and the order dated 06.12.2003 is recalled. List the writ petition for final hearing on 29.10.2004.

Sd/- Sd/-
(Irshad Hussain, J.) (P.C. Verma, A.C.J.)"

8. Thereafter, the writ petition has, now today, come up before us for final hearing for quashing of the order dated 08.08.2003. Mr. Gopal Narain, learned counsel attacked the order on the following basis:

i. According to him, as per Section 73(1) of the U.P. Reorganisation Act, the petitioner would continue to be serving in connection with the affairs of the State of Uttar Pradesh unless the petitioner was required, by general or special order of the Central Government, to serve provisionally in connection with the affairs of the State of Uttaranchal. From this, the learned counsel says that if the petitioner, then, continued even after 09.11.2000 to serve in connection with the affairs of the State of Uttar Pradesh, then, he could be promoted by the State of Uttar Pradesh and such promotion would be binding as against the State of Uttaranchal and therefore, the State of Uttaranchal was bound to honour the order of the Uttar Pradesh Government awarding promotion to the petitioner and

therefore, State of Uttaranchal should have allowed the petitioner to join on the post of Deputy Commissioner, Trade Tax in his promoted capacity.

ii. The second contention of the learned counsel for the petitioner is that similarly situated persons and more particularly, a person called Anil Sharma was also given a promotion after 09.11.2000, but he was allowed to serve and join on the promotional post.

9. As against this, Mr. K.P. Upadhyaya, the learned Government pleader supported the order passed dated 08.08.2003 on the basis of the reasons given in that order. It has been argued by Mr. K.P. Upadhyaya, Standing Counsel that after 09.11.2000, there was no question of the State of Uttar Pradesh awarding any promotion to such persons, who were serving in State of Uttaranchal. He, further, submits that the right to post a particular person or to give promotion to a particular person, lay exclusively with the State of Uttaranchal and the State of Uttar Pradesh should not have interfered with this right. The learned Standing Counsel also points out that, in fact, though and order, awarding promotion to the petitioner, might have been passed, still, the very look of the order suggests that under that order, the Uttar Pradesh Government had not appointed the petitioner anywhere and the petitioner could not thrust himself to the promotional post on the basis of this order in the absence of any posting order passed by the Uttaranchal Government.

10. The learned Government pleader, then, points out that Section 73(1) of the U.P. Reorganisation Act to be read in the light of & with Section 75 of the U.P. Reorganisation Act and under Section 75, there was an exclusive right to the State of Uttaranchal to deal with the Government servants, who were serving in Uttaranchal. The language of Section 75(1) of the U.P. Reorganisation Act is heavily relied upon by the learned Standing Counsel.

11. Considering the rival submissions, we must, first, address on the promotion order. Unfortunately, that promotion order is not filed in this writ petition, however, at the request of the learned counsel for the petitioner, we have seen the said promotion order from the record of writ petition No. 828 of 2001 (S/B), which was allowed to be withdrawn for pursuing the representation, which was pending before the Uttaranchal government, which representation was made by the petitioner. The order does suggest that as many as 5 persons, belonging to the Scheduled Castes, were to be promoted to the post of Deputy Commissioner, Trade Tax. The order, itself, suggests that the copies, thereof, were sent to the Commissioner, Trade Tax, Uttar Pradesh; Chairman, Trade Tax Tribunal, Uttar Pradesh Lucknow; Auditor General, Uttar Pradesh, Allahabad; Government Press; all Additional Commissioners Grade I; Deputy Commissioners as well as the Commissioner (Appeals), Uttar Pradesh; Private Secretaries to Hon'ble Minister, Finance & Trade Tax of Uttar Pradesh and the concerned officers through Commissioner, Trade Tax, Uttar Pradesh.

12. Now, it is obvious from this order that this order was not sent to the Uttaranchal Government, at all. The order seems to have been sent only to the concerned authorities within the State of Uttar Pradesh. It is not even sent to the petitioner because, admittedly, the petitioner was not serving in the Sate of Uttar Pradesh, when this order was passed. There was, Therefore, absolutely nothing with the petitioner in the nature of an official communication of his promotion order, on the basis of which, he could insist upon joining as Deputy Commissioner, Trade Tax at Rudrapur. Rudrapur, admittedly, was and is in the State of Uttaranchal. We, therefore, completely fail to follow as to how the petitioner, on the basis of this order, insist upon joining and give the joining report as deputy Commissioner, Trade Tax at Rudrapur and as to how the petitioner could insist upon the prayer made in the writ petition.

13. Very interstingly, the original prayer No. 2 in the writ petition is:

> "to issue a writ order or direction in the nature of mandamus commanding the respondent No. 2 to forthwith countersign the joining report dated 05.05.2001 submitted by the petitioner pursuant to the promotion order dated 01.05.2001 issued by the respondent No. 3 and direct the respondent No. 1 to reconsider and review its order dated 12.11.2001 by deciding the representation dated 18.12.2001 of the petitioner."

14. This prayer has not been deleted by the petitioner, so far, though by way of an amendment, he has now sought the quashing of the order dated 08.08.2003. When we see the stand taken by the Uttaranchal Government, the Uttaranchal Government has nowhere accepted that the said order was either sent to the Uttaranchal Government or that the Uttaranchal Government ever endorsed the same. Whether this promotion was binding on Uttaranchal State is entirely a different & independent question. However, one thing can be, very definitely, said that the authorities in Uttar Pradesh could not have directed the posting of the petitioner on the alleged promoted post in Uttaranchal and they had, in fact, not so directed. That was the exclusive right of the Uttaranchal Government; administratively as well as principally.

15. Therefore, the factual situation boils down to this that there was no order passed by the Uttaranchal Government giving any posting to the petitioner on the basis of his alleged promotion order. We, also, fail to follow as to how the petitioner came in possession of this promotion order, which promotion order was never made over to the petitioner by the State of Uttar Pradesh. Under such circumstances, the petitioner, clearly, cannot insist on his posting.

16. In this matter, however, the learned counsel has pointed out that Shri Anil Sharma was also promoted by the Uttar Pradesh Government after the appointed day i.e. 09.11.2000 and yet, he was allowed to join in his promoted post. It is really futile for us to consider the case of Shri Anil Sharma, however, the learned counsel

says that the State could not treat Shri Anil Sharma differently from the petitioner. In that, there is a clear-cut difference, firstly, Shri Anil Sharma was Class III employee, who was already made over to the State of Uttaranchal by the general order passed by the Central Government. Secondly, it seems that order was sent to the Uttaranchal Government and Uttaranchal Government indorsed and passed a specific order permitting Shri Anil Sharma to join in his promotional post. We are not here to consider as to whether the promotion order was binding on the State of Uttaranchal. We must, however, hasten to clear that there was no endorsement on the promotional order of the petitioner by the Uttaranchal Government nor had the Uttaranchal Government had any opportunity to pass any order either accepting or rejecting the promotional order, since the order was never sent to the Uttaranchal Government. It seems that it was the petitioner, who supplied the same order or the copy of same promotional order to the Uttaranchal Government. There does not appear to be any official communication in between the State of Uttar Pradesh and the State of Uttaranchal intimating the State of Uttaranchal the fact of the promotion order dated 01.05.2001. Therefore, this case could not be compared to the case of Shri Anil Sharma.

17. This takes us to the consideration of the stand taken by the petitioner that he continued to be and officer serving in connection with the affairs of the State of Uttar Pradesh, since there was no general or special order. In fact, whether there was a general or special order, is not a fact stated in the writ petition by either parties. We, therefore, do not have a factual basis to come to the conclusion as to whether the petitioner was or was not, by a general or special order passed by the Central Government, made over provisionally to serve in connection with the affairs of State of Uttaranchal. Indeed, under Section 73 of the U.P. Reorganisation Act, the power to pass such an order is that of the Central Government, which could normally pass that order within one year and if it was not passed within one year, then, the only

requirement was the consultation of the Governments of the successor states. Since, this factual position is not clarified before us or claimed before us in the writ petition by way of pleadings, we are unable to, straight away, hold that the petitioner continued to be an officer of Uttar Pradesh or more specially, he continued to serve after 09.11.2000 in connection with the affairs of State of Uttar Pradesh.

18. As if this is not sufficient, the petitioner, specifically, admits that even before the creation of State of Uttaranchal, when the joining of the petitioner was asked for, he had, specifically, opted for the State of Uttaranchal and ultimately, by the final order passed under Section 73(2) of the U.P. Reorganisation Act, he has been permanently allocated to the State of Uttaranchal. We, therefore, fail to see as to how the petitioner can claim that he could have been validly promoted by the State of Uttar Pradesh and the State of Uttar Pradesh could have passed the promotion order even after 09.11.2000, when he was not, admittedly, the Government servant serving in Uttar Pradesh, but was serving in the area allotted to State of Uttaranchal.

19. Even under Section 75 of the U.P. Reorganisation Act, it is specified that every person, who, before the appointed day, is holding or discharging the duties of any post in connection with the affairs of the existing State of Uttar Pradesh in any area, which on that date falls within any of the successor State; shall continue to hold the same post or office in that successor State. Now, with this it is clear that the petitioner, who was working in connection with the affairs of State of Uttar Pradesh, but was serving at Rudrapur, which is within the area of Uttaranchal after 09.11.2000; would continue to hold the same post and office in the successor State i.e. the State of Uttaranchal. There is a, further, reiteration as under:

> "and shall be deemed, on and from that day, to have been duly appointed to the post or office by the Government of, or any other appropriate authority in that successor State."

20. Therefore, by the deeming clause, the petitioner would be deemed to have been appointed in his capacity as an Assistant Commissioner in the State of Uttaranchal. When we apply the language of Section 75, the cobwebs of any confusion are clear straight away. The petitioner was, actually, working at Rudrapur, which area fell, after 09.11.2000, to Uttaranchal and therefore, the petitioner would be deemed to have been appointed by the Sate of Uttaranchal and would continue to work in the same capacity as if he is appointed by the State of Uttaranchal.

21. If that was so, then, what beats us completely is as to how the State of Uttar Pradesh could pass any orders promoting him and more particularly, appointing him or posting him in the State of Uttaranchal. In our opinion, there are no such orders passed and even if there were any such orders passed, they would be clearly illegal and non est. This is the precise logic on the basis of which the impugned order dated 08.08.2003 has been passed and we find the order to be well reasoned order, in which the claim of the petitioner is properly dealt with and rejected. The order also speaks about the exclusive jurisdiction of the state of Uttaranchal and proceeds to hold that there cannot be any encroachment on this exclusive power of Uttaranchal State to deal with its officers. We agree with the said logic expressed in the order.

22. As a result, we hold that the petition has no merits and it is dismissed. We, however, appreciate the efforts taken by Mr. Gopal Narain, Advocate as well as Mr. K.P. Upadhyaya, Standing Counsel to assist us in the matter.

(Prafulla C. Pant, J.) **(V.S. Sirpurkar, C.J.)**
07.03.2005 **07.03.2005**

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